

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES AMERICA,

Plaintiff,

v.

CRIMINAL 97-032(HL)

JOSE PADILLA GALARZA

(APARTMENT PH 15 IN LA MANCHA
CONDOMINIUM, CAROLINA PUERTO RICO)

Defendant.

UNITED STATES MOTION REQUESTING ORDER TO SHOW CAUSE

TO THE HONORABLE COURT:

COMES NOW, Plaintiff, United States of America, by and through its undersigned attorneys, in a forfeiture action and very respectfully alleges and prays as follows:

In view of R.G. Mortgage's refusal to accept a check for \$89,785.04, which represent the proceeds of the sale of the property described as Apartment Penthouse 15, Condominio La Mancha, Isla Verde, Carolina, Puerto Rico, the United States deposited said check with the court on September 29, 2004.

The United States respectfully request that an order be issued against R.G. Mortgage to show cause as to why sanctions shall not be impose for breach of the stipulation submitted and for demanding interest payments not contained in the agreement between the parties , that was approved by this court.

FACTUAL BACKGROUND

On August 30, 2001, attorneys for claimant and the United States submitted a stipulation for the approval of the Court.

The stipulation was approved by the Court the day it was submitted. The stipulation established that :

Plaintiff United States agrees that upon entry of Final Order of Forfeiture and after the sale of the property it will pay claimant (a) all unpaid principal due to the claimant under the January 23, 1999 mortgage instrument attached hereto as exhibit A which was secured by a Deed of Trust, (recorded in the official records of Carolina, Puerto Rico Recording No.p 75969-14334) and is attached hereto as Exhibit E that is constituted for the principal amount

of \$100,000.00. The unpaid principal as of this date is \$89,785.04.

The United States Marshals conducted the sale of the property, on April 2, 2003 by a company known as Fidelity, and counsel Carmen I. Texeira Gueists was the closing attorney. R.G. Mortgage did not appear or send a representative to the closing of the property.

Upon the sale of the property a check was issued to R.G. Mortgage for the amount stipulated in the settlement agreement, that is \$89,785.04. The U.S. Marshals kept the check, in the absence of a representative from R.G. Mortgage at the time. Inadvertently, the check remained at the U.S. Marshals office until it was sent to counsel Texeira Gueists to give to R.G. Mortgage.

On February 11, 2004, Attorney Carmen I. Texeira Gueists informed the U.S. Marshals that she attempted to deliver the \$89,785.04 proceeds of the sale of the above captioned property to Francisco Cortes, Vice President of RG Mortgage Corporation. However, Mr. Cortes refused to accept the check delivered by counsel stating that it did not include the payment of additional interests from August 1 2001 to February 11, 2004.

The United States submits that such additional interests alleged by RG Mortgage were not part of the Stipulated Settlement Agreement submitted and approved by this Honorable Court on August 30, 2001.

The United States submits to the Honorable Court that not only there was not duty-bound obligation to enter into a stipulation with R.G. Mortgage, but also that R.G.'s demand to be paid additional interests are unexplained and without legal merit.

WHEREFORE the United States respectfully prays to the Honorable Court to take notice of the foregoing and ORDER R.G. Mortgage to SHOW CAUSE as to why the United States should pay the requested interests and any pronouncements deemed appropriate.

CERTIFICATE OF SERVICE

I do hereby certify that on this date I filed the present sealed motion and a copy will be sent to : Bird, Bird & Hestres, counsel Jorge J. Villavicencio , at P.O.Box 9024040, San Juan, Puerto Rico 00902-4040; and to Carmen I. Texeira Gueits , Urb. Villa Fontana Park, 5-1111-6 calle Parque Muñoz Rivera, Carolina, P.R. 00983

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 9 day of November, 2004.

H.S. GARCIA
UNITED STATES ATTORNEY

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